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No. 808

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

RONALD L. TREE and NANCY PERKINS
FIELD TREE, His Wife,
Petitioners,

vs.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF CLAIMS

REPLY BRIEF FOR PETITIONERS

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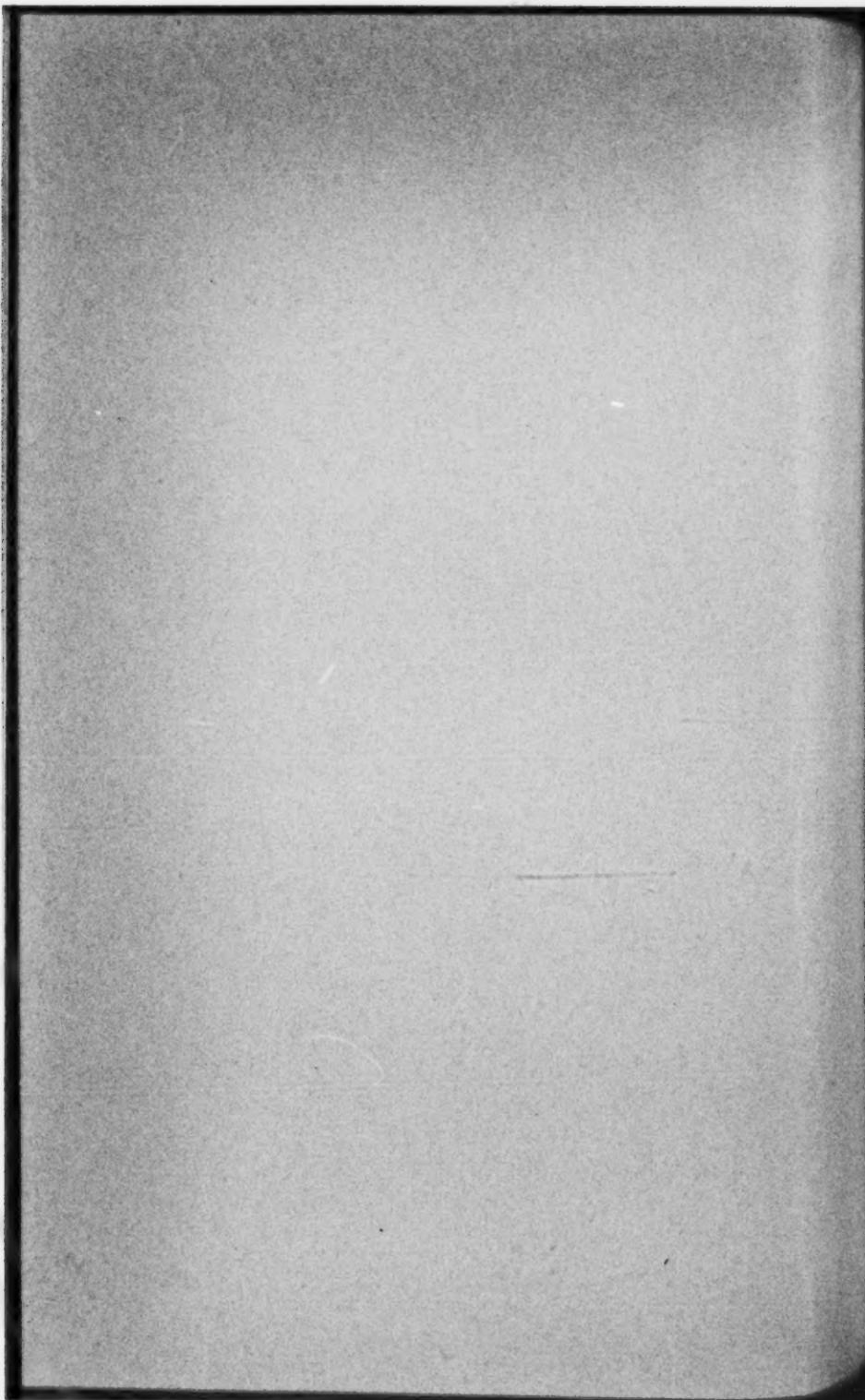


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The government brief ignores the fact, found by the Court of Claims (R. 26, 27), that the agreement between Marshall Field and Mrs. Tree provided for payment of the agreed sum at all events, and avoids meeting the petitioners' argument of a conflict which was premised upon such unconditional payment.

There is no reference in the statement of the "Question Presented" (Br. 2) to the fixed, unconditional character of the annuity, nor even to the fact

that there was an agreement which determined the amount of the payment. In the "Argument" the brief says that "the agreement simply fixed the amount to be paid by the trustees out of the income" (Br. 9, 10). This is not the fact. The agreement fixed the amount to be paid "even if the income received by the trustees from Henry's share was not sufficient" (R. 26, 27). Later on the brief sidesteps the real question in the case and ignores the Court of Claims finding (R. 26, 27) on certainty of payment, by asserting that it "is unnecessary to speculate as to what would happen if the trust income were insufficient to pay the \$85,000 per year or whether in such event Marshall Field III would be bound to make up the deficit." (Br. 11.)

The government's citation (Br. 10) of the decision in *Continental Illinois Nat. Bank & Trust Co., Trustee, v. Commissioner*, 40 B.T.A. 25, is irrelevant to the question raised by plaintiffs. The payments there were clearly deductible by the trust as held in that case and taxable to the beneficiary, but the question is: *To whom* are the payments taxable, that is, *who* is the beneficiary? The payments made to Mrs. Tree by the trustees were simply a disposition by Field of his income in discharge of his unconditional obligation to pay the agreed fixed sum.

The government in citing (Br. 10) the decision in the *Butterworth* case (*Helvering v. Butterworth*, 290 U. S. 365, 78 L. ed. 365) fails to state that the annuity there was payable solely out of *income*. And in referring to the *Pardee* case (decided with the

Butterworth case), the brief says that this Court held that where an annuity under a will "was payable at all events and did not depend upon income from the trust estate," the widow-recipient was not taxable (Br. 10), thus again erroneously implying that the \$85,000 annuity to Mrs. Tree was conditioned upon the trust realizing that amount of income.

Finally, the government says that, "even if an assignment of income be deemed to have been made" by the agreement (as though the plaintiffs had argued that there was an assignment and the government were, for the argument, conceding the point), the decision of this Court in *Blair v. Commissioner*, 300 U. S. 5, 81 L. ed. 465, would render the annuity taxable to Mrs. Tree (Br. 11). As to this argument, the *Blair* decision would, of course, support the decision below if there were an assignment of an interest from which the income was received, but the question here is whether there was such an assignment. It seems clear enough that the provision for payment out of the trust income was simply security for payment of the fixed annuity agreed upon by Marshall Field before the decree was entered as distinguished from a transfer to Mrs. Tree of ownership of an interest in the trust. The government again chooses to avoid discussion of the real issue presented in this distinction between security for payment and absolute ownership, although the distinction is recognized in one of the government's own citations (Br. 12), *Pearce v. Commissioner*, 315 U. S. 543, 86 L. ed. 1016.

The failure of the United States to meet and answer the petitioners' reasons for granting the writ strongly suggests that it was not deemed feasible to do so.

Respectfully submitted,

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